

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2706 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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ARUN VINODRAI VYAS

Versus

EXECUTIVE ENGINEER

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Appearance:

MRS DT SHAH for Petitioner

MS SEJAL K MANDAVIA for the Respondents.

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 18/08/98

ORAL JUDGEMENT

By means of this writ petition, the petitioner has sought for a direction to treat his service continuous and for payment of back wages. The petitioner was a work-charged Mukaddam (supervisor) under the control of the respondents. The services of the petitioner were terminated by an order dated 31.8.1982.

The petitioner raised his claim before the Labour Court and the matter was referred as Labour Court Reference No. 444 of 1983 before the Principal Officer, Labour Court, Rajkot. The Principal Officer, Labour Court, Rajkot by his award dated 28.8.1992 ordered to reinstate the petitioner in service without payment of back wages. The respondents filed Special Civil Application No.6265 of 1992 in this court challenging the award of the Principal Officer, Labour Court, Rajkot. That Special Civil Application of the respondent Management was dismissed by this Court vide the judgment and order dated 6.8.1993. Thus, the order of reinstatement of the petitioner in service has become final.

2. Now, the learned counsel for the petitioner does not want to press this petition for back wages and she challenges the order of the Principal Officer, Labour Court, Rajkot passed in Reference No.444 of 1983 to the extent of continuity of service of the petitioner from the date of termination till his reinstatement with consequential benefits.

3. In this regard, the petitioner has relied on a decision of the Division Bench of this Court in the case of N T Ramandani vs.Gujarat Warehousing Corporation, reported in 1985 (2) GLR, 1040. In that case, this Court relied on the following observations of the Supreme Court in the case of Management of Karnatak State Road Transport Corporation vs. Boraiah, (AIR 1983, SC,1320), as follows:

"13. Once the conclusion is reached that retrenchment as defined in Section 2(oo) of the Disputes Act covers every case of termination of service except those which have been embodied in the definition discharge from employment or termination of service of a probationer would also amount to retrenchment. Admittedly the requirements of section 25F of the Disputes Act had not been complied with in these cases. Counsel for the appellant did not very appropriately dispute before us that the necessary consequence of non-compliance of section 25F of the Disputes Act in a case where it applied made the order of termination void. The High Court in our opinion has, therefore, rightly come to the conclusion that in these cases the order of retrenchment was bad and consequently it upheld the Award of the Labour Court which set aside those orders and gave appropriate relief. These appeals are dismissed.

There would be one set of costs. Consolidated hearing fee is assessed at Rs. 5000/-."

4. The submission of the learned counsel for the petitioner is that once termination order is held to be illegal, void ab initio, the petitioner is entitled for continuity of service as held by the division of this Court in the aforesaid case which reads as under:

"Thus, from the abovesaid judgments, it is clear that if the pre-condition for a valid retrenchment has not been satisfied, the termination of service is ab initio void, invalid and inoperative and that the persons whose services have been terminated must be deemed to be in continuous service."

5. The learned counsel for the petitioner further relied on the judgment of this court in the case of State of Gujarat and others vs. Milan R Vasani in Special Civil Application no. 6554 of 1996 decided on 18.1.1997.

6. The learned counsel for the respondents had disputed the findings of the Labour Court, but that order, in my opinion, is a final one in view of the decision of this Court in SCA No. 6265 of 1993 which was filed challenging the impugned order.

7. I have carefully considered the submissions made on behalf of the parties. Once the order of termination is held invalid or illegal, the services of the workman will be deemed to be with continuity. In the case on hand, the termination order of the petitioner has been held illegal by the Labour Court and confirmed by this Court in the writ petition filed by the Management. As such the services of the petitioner will be deemed to be continuous. In view of the above discussion, the petitioner is entitled for continuity of service under the control of the respondents from the date of order of his termination till his reinstatement on 31.8.1982.

8. Accordingly, the petition is allowed. The respondents are directed to treat the services of the petitioner as continuous services for the period from his termination on 31.8.1982 till the date of his reinstatement in service on 13.8.1992 with consequential benefits except back wages. Rule is made absolute with no order as to costs.

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